

CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

1900 Capitol Avenue

Sacramento, California 95814-4213

(916) 445-7254 or (888) 921-2682

OFFICE OF THE EXECUTIVE DIRECTOR



May 24, 2005

05-0009

TO: All Individuals and Groups Interested in the Activities of the
California Commission on Teacher Credentialing

A handwritten signature in black ink, appearing to read "Sam W. Swofford".

FROM: Dr. Sam W. Swofford, Executive Director

SUBJECT: Approval of Amendments to California Code of Regulations, Title 5,
Sections 80300, 80303, 80307, 80310 and 80412, Pertaining to the
Committee of Credentials

The amendments to the California Code of Regulations, Title 5, sections 80300, 80303, 80307, 80310 and 80412, pertaining to the Committee of Credentials, have been approved by the Office of Administrative Law, and are effective April 23, 2005.

Background

Necessary amendments were made to comply with the enactment of legislation (SB 299, Chap. 342, Stats. 2001) and an appellate decision (*Cross v. California Commission on Teacher Credentialing et al.* (2003) 111 Cal.App.4th). Additional changes made technical and clarifying corrections and provided cost-saving procedures relating to disciplinary investigations.

Summary of Changes

Section 80300: The definition of "credential" was expanded to include certificates of clearance and waivers, and the improper term "hearing" was deleted from the definition of "formal review."

Section 80303: The regulation was changed to clarify when the Committee of Credentials may commence an investigation upon notice from the employer of a credential holder that there has been a change in employment status while allegations of misconduct are pending, and to make investigations of reporting violations discretionary, instead of mandatory.

Section 80307: The scope of disclosure of information while an investigation is in progress has been redefined.

Section 80310: The regulation now allows meeting notices to be sent via regular mail rather than certified mail, return receipt requested. The notice of the Committee of Credentials' recommendation and Confidential Investigative Report will only be sent to all known educational employers.

Section 80412: The regulation was updated with the Commission's current name and the outdated address was deleted.

Questions

If you have questions concerning the regulation changes, please contact the Division of Professional Practices at (916) 445-0243.

California Code of Regulations, Title 5, Sections 80300, 80303, 80307, 80310, and 80412, Pertaining to the Committee of Credentials

80300 DEFINITIONS

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:

- (1) a prior record of adverse action including the nature and extent of that record;
- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
- (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
- (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

(d) "Commission" is the Commission on Teacher Credentialing or a predecessor agency.

- (e) "Committee" is the Committee of Credentials.
- (f) "Confidential investigative report" is a summary of applicable law and relevant facts, as well as information regarding aggravating and mitigating factors, prepared and presented to the Committee pursuant to Education Code section 44242.5(c)(2).
- (g) "Credential" is any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission.
- (h) "Complainant" is the person or persons filing a statement pursuant to Education Code section 44242.5(b)(2), or an employer filing a notice pursuant to Education Code section 44242.5(b)(3), or (4).
- (i) "Denial" is refusal to grant a credential to an applicant whose conduct comes within the provisions of Education Code sections 44435 or 44346.
- (j) "Employer" is the entity which contracts with or otherwise engages a holder or applicant for the performance of educational services.
- (k) "Formal review" is the meeting held pursuant to Education Code section 44244.
- (l) "Holder" is an individual possessing a credential, permit, waiver or other certification document issued by the Commission.
- (m) "Mitigating factor" is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:
 - (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;
 - (2) lack of harm to the person who is the object of the misconduct;
 - (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;
 - (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;
 - (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or
 - (7) the nature and extent of subsequent rehabilitation.
- (n) "Private admonition" is an adverse action defined and governed by Education Code section 44438.
- (o) "Probable cause" is reasonable grounds for belief in the existence of facts warranting adverse action.
- (p) "Public reproval" is a public warning from the Commission that conduct is not appropriate for a credential holder or applicant. Following a public reproval, commission of the same or similar misconduct may result in more serious adverse action. It is issued only when adequate to appropriately protect the public, schoolchildren and the profession.
- (q) "Recurring conduct" is behavior involving the exercise of consistently poor judgment or misconduct.
- (r) "Revocation" is the termination of an individual's ability to work in a position requiring certification. Once effective, the revocation continues unless the individual is reinstated by the Commission.
- (s) "Sexual misconduct" is:
- (1) acts or conduct, directed at a minor which a reasonable person would believe to be motivated by sexual interest;
 - (2) acts or conduct defined in Education Code section 44010 whether or not the applicant or holder was convicted or arrested; or
 - (3) the proliferation or distribution of child pornography or the exploitation of any minor through the use of any pornography by a credential holder or applicant. "Pornography" consists of the acts defined in Part 1, Title 9, Chapters 7.5 and 7.6 of the Penal Code, commencing with section 311.
- (t) "Suspension" is the temporary inactivation of a credential for a specified period of time. A suspension may be stayed on conditions of probation or may be an actual suspension or may be both. If an actual suspension, the credential holder may not work in a position requiring a credential during the period of actual suspension.

(1) A "stayed suspension" may be issued for a specified period of time only if the stay and performance of specified rehabilitative or probationary duties by the credential holder during the period of the stay is deemed consistent with the purposes of professional discipline.

(2) An "actual suspension" may be issued for a specified period of time. Actual suspensions imposed for one year or longer shall require presentation of sufficient proof to the Commission of the credential holder's rehabilitation, or present fitness to perform the duties authorized by the credential before the suspension may terminate.

NOTE

Authority cited: Sections 44225(q) and 44242.7(b), Education Code. Reference: Sections 44002, 44225(q), 44242.7, 44242.5, 44421, 44244, and 44438, Education Code.

80303 REPORTS OF CHANGE IN EMPLOYMENT STATUS

- (a) Whenever a credential holder, working in a position requiring a credential:
- (1) is dismissed or nonreelected;
 - (2) resigns;
 - (3) is suspended or placed on unpaid administrative leave as a final adverse employment action for more than 10 days;
 - (4) retires; or
 - (5) is otherwise terminated by a decision not to employ or re-employ;
- as a result of an allegation of misconduct or while an allegation of misconduct is pending, the superintendent of the employing school district shall report the change in employment status to the Commission not later than 30 days after the employment action.
- (b) The report shall contain all known information about each alleged act of misconduct.
- (c) The report shall be made to the Commission regardless of any proposed or actual agreement, settlement, or stipulation not to make such a report. The report shall also be made if allegations served on the holder are withdrawn in consideration of the holder's resignation, retirement or other failure to contest the truth of the allegations.
- (d) Failure to make a report required under this section constitutes unprofessional conduct. The Committee may investigate any superintendent who holds a credential who fails to file reports required by this section.
- (e) The superintendent of an employing school district shall, in writing, inform a credential holder of the content of this regulation whenever that credential holder, working in a position requiring a credential, is dismissed, nonreelected, resigns, is suspended or placed on unpaid administrative leave as a final adverse employment action for more than ten days, retires or is otherwise terminated by a decision not to employ or re-employ as a result of an allegation of misconduct or while an allegation of misconduct

is pending. Failure to comply with this subdivision by a superintendent of schools constitutes unprofessional conduct which shall be investigated by the Committee of Credentials.

NOTE

Authority cited: Section 44225(q), Education Code. Reference: Section 44242.5(b)(3), Education Code; and *California Teachers Association v. California Commission on Teacher Credentialing*, (Sacramento Superior Court Case No. 98AS03278, Judgment Granting In Part Request For Declaratory Relief, filed April 26, 1999.)

80307 DISCLOSURE OF DOCUMENTS DURING INVESTIGATION

(a) Upon receipt of a written request, the Committee shall disclose to the credential holder or applicant or his or her attorney only those portions of the investigation file as authorized by Education Code section 44244(a).

(b) Disclosure of documents pursuant to subsection (a) may be provided at any time subsequent to the commencement of the initial review pursuant to Education Code section 44242.5(c).

NOTE

Authority cited: Section 44225(q), Education Code. Reference: Section 44244(a), Education Code; and *Cross v. California Commission on Teacher Credentialing et al.* ((2003) 111 Cal.App.4th 1001.

80310 NOTICE OF MEETING, FORMAL REVIEW

(a) The notice of meeting required by Education Code section 44244(a) shall be sent to the address of record of the holder or applicant. In its discretion, the Committee may also send the notice to the last known address of the holder or applicant. However, it is the responsibility of the holder or applicant to notify the Commission of any change in his or her address of record. The notice to the holder or applicant shall contain a confidential investigative report.

(b) A copy of the notice, without the confidential investigative report, shall be sent to any complainant and all known educational employers.

NOTE

Authority cited: Section 44225(q), Education Code. Reference: Section 44244(a), Education Code; and Section 1013(a), Code of Civil Procedure.

80412 FILING OF MAILING ADDRESS

(a) Every person applying for, holding, or to whom is issued, a credential, shall file with the Commission his or her present mailing address and shall notify the Commission in writing of any change therein.

(b) Such filing of address and notice of change therein shall be made in writing and delivered, or forwarded by mail, postage prepaid, at the office of the Commission on Teacher Credentialing.

NOTE

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44225(q), Education Code.